

F L Trucking Corporation and Frank Jackson and General Chauffeurs, Sales Drivers and Helpers Local Union No. 179, affiliated with the International Brotherhood of Teamsters, AFL-CIO.
Case 13-CA-31286

April 29, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND COHEN

Upon a charge filed by Frank Jackson, an individual, on October 28, 1992, the General Counsel of the National Labor Relations Board issued a complaint on December 8, 1992, against F L Trucking Corporation, the Respondent, alleging that it has violated Section 8(a)(1), (2), and (3) of the National Labor Relations Act. On February 10 and March 16, 1993, respectively, the Respondent filed an answer and a revised answer to the complaint.

Thereafter, on September 16, 1993, the Respondent entered into an informal settlement agreement which was approved by the Regional Director for Region 13 on September 20, 1993.¹ By letters dated September 27 and October 29, 1993, the Region requested the Respondent to comply with the terms of the settlement agreement by remitting payment to the three discriminatees and returning copies of the signed notices.

Thereafter, by letter dated November 29, 1993, in an effort to secure compliance, the Region offered another settlement stipulation to the Respondent which provided for a 6-month payment plan. The settlement stipulation further provided that:

In consideration of the Board's granting a payment plan, Respondent further agrees that in the event of any non-compliance with any of the provisions of paragraphs 2(a) through (d) of this Settlement Stipulation, including but not limited to, failure to timely make any monthly payment pursuant to the payment schedule, and after 15 days notice from the Regional Director of the National Labor Relations Board, on motion for summary judgment by the General Counsel, the Answer of the Charged Party shall be considered withdrawn. Thereupon, the Board may issue an Order requiring the Charged Party to Show Cause why said Motion of the General Counsel should not be granted. The Board may then, without necessity of trail [sic], find all allegations of the Complaint to be true and make findings of fact and conclu-

sions of law consistent with those allegations, adverse to the Charge [sic] Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations so found as is customary to remedy such violations, including but not limited to the provisions of the Settlement Agreement. The parties further agree that a Board Order and a U.S. Court of Appeals Judgment may be entered hereon ex parte.

On December 6, 1993, the Respondent entered into this settlement stipulation (the settlement stipulation), and the settlement stipulation was approved by the Regional Director on December 16, 1993.

Thereafter, by letter dated December 20, 1993, the Respondent was notified of the Regional Director's approval of the settlement stipulation and was requested to make its first payment by December 15, 1993. Subsequently, on January 7, 1994, the Region again requested the Respondent to comply with the settlement stipulation by remitting the first payment which was due on December 15, 1993. The letter further stated that if "the default is not cured the Region will take the legal action available pursuant to the terms of the Settlement Agreement without further notice." No payment was thereafter received.

Thereafter, on March 23, 1994, the General Counsel filed a Motion for Summary Judgment with the Board, requesting, pursuant to the settlement stipulation, that the Board find all allegations of the complaint to be true and issue an appropriate remedial order. On March 24, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted.

Here, according to the uncontroverted allegations in the Motion for Summary Judgment, although the Respondent initially filed an answer to the complaint, it subsequently entered into a settlement stipulation which provided for withdrawal of the answer in the event of noncompliance with the settlement stipulation, and such noncompliance has occurred. Accordingly, we find that the Respondent's answer has been with-

¹ By letter dated September 15, 1993, the Charging Party, General Chauffeurs, Sales Drivers and Helpers Local Union No. 179, affiliated with the International Brotherhood of Teamsters, AFL-CIO, confirmed by letter that it had no objection to the proposed settlement agreement.

drawn by the terms of the settlement stipulation, and that, as further provided in the settlement stipulation, all the allegations of the complaint are true.

Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times the Respondent, a corporation, with an office and place of business in Chicago, Illinois, has been engaged in the interstate and intrastate transportation of construction materials. During the 12-month period ending December 31, 1991, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for Elmhurst-Chicago Stone Company, an enterprise within the State of Illinois.

At all material times Elmhurst-Chicago Stone Company, with an office and place of business in Elmhurst, Illinois, has been engaged in the sale of construction materials. During the 12-month period ending December 31, 1991, Elmhurst-Chicago Stone Company, in conducting its business operations within the State of Illinois purchased and received at its Elmhurst, Illinois facility goods valued in excess of \$50,000 directly from points outside the State of Illinois and the Company is directly engaged in the interstate commerce.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

On various dates between May and July 1992, at the Respondent's facility, the Respondent threatened its employees with discharge because they had engaged in union activities.

On a date between May and July 1992, at the Respondent's facility, the Respondent created an impression among its employees that their union activities were under surveillance by the Respondent.

About July 17, 1992, at the Respondent's facility, the Respondent threatened its employees with discharge because they had refused to engage in union activities.

About July 26, 1992, at the Respondent's facility, the Respondent threatened its employees with discharge because they had engaged in union activities; created an impression among its employees that their union activities were under surveillance by the Respondent; and interfered with its employees by prohibiting them from speaking about the Union with other employees.

About July 1992, at the Respondent's facility, the Respondent interfered with its employees by prohibit-

ing them from speaking about the Union with other employees.

About July 1992, the Respondent, in a truck, threatened its employees with discharge because they had engaged in union activities, and created an impression among its employees that their union activities were under surveillance by the Respondent.

In about June or July 1992, the Respondent rendered assistance and support to the Union by distributing union authorization or membership cards to its employees, recognized the Union as the collective-bargaining representative of a unit of employees who perform, inter alia, hauling and other miscellaneous truckdriving functions (the unit), and executed a collective-bargaining agreement with the Union covering the unit which contained a union-security clause requiring, among other things, that the Respondent's employees in the unit join or become members of the Union. The Respondent engaged in the foregoing conduct even though the Union did not represent an uncoerced majority of the unit at the times specified.

About July 20, 1992, the Respondent suspended its employee Frank Jackson, and about July 26, 1992, discharged and has since failed to reinstate him. The Respondent engaged in the foregoing conduct because Jackson assisted the Union and engaged in other union and protected concerted activities, and to discourage employees from engaging in these activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (2), and (3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (2) of the Act by assisting, recognizing, and executing a collective-bargaining agreement containing a union-security clause with the Union notwithstanding that the Union did not represent an uncoerced majority of the unit employees, we shall order the Respondent: (1) to withdraw and withhold recognition from the Union as the exclusive bargaining representative of the unit, unless and until the Union has been certified by the Board as the exclusive bargaining representative of the unit; (2) to cease giving effect to the collective-bargaining agreement it executed with the Union, except that nothing here shall re-

quire the withdrawal or elimination of any wage increase or other benefits or terms and conditions of employment that may have been established pursuant to the performance of the agreement; and (3) to reimburse all present and former employees who were coerced into membership in the Union by virtue of the Respondent's distribution of union authorization or membership cards to the employees and by virtue of the union-security clause contained in the collective-bargaining agreement, for moneys paid or withheld from them for initiation fees, dues, or other obligations of membership, with interest computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by suspending, discharging, and refusing to reinstate employee Frank Jackson, we shall order the Respondent to offer Jackson immediate and full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, supra. The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify Jackson in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, F L Trucking Corporation, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discharge because they had engaged in union activities; creating an impression among its employees that their union activities were under surveillance by the Respondent; interfering with its employees by prohibiting them from speaking about the Union with other employees; and rendering assistance and support to the Union by distributing union authorization or membership cards to its employees.

(b) Recognizing General Chauffeurs, Sales Drivers and Helpers Local Union No. 179, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of its employees who perform, inter alia, hauling and other miscellaneous truckdriving functions (the unit) or executing a collective-bargaining agreement with the Union covering the unit, unless and until the Union has been certified by the National Labor Relations Board as the exclusive bargaining representative of the unit.

(c) Suspending, discharging, or refusing to reinstate employees because they assisted the Union or engaged in other union or protected concerted activities, or to discourage employees from engaging in such activities.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold recognition from the Union as the bargaining representative of the unit, cease giving effect to the collective-bargaining agreement with the Union covering the unit, and reimburse employees for all moneys paid by them for initiation fees, dues, or other obligations of membership in the Union, with interest, as provided in the remedy section of this decision.

(b) Offer Frank Jackson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the Respondent's discrimination against him, with interest, in the manner set forth in the remedy section of this decision.

(c) Expunge from its records any reference to the suspension and discharge of Frank Jackson and notify him in writing that this has been done.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with discharge because they have engaged in union activities; create an impression among our employees that their union activities are under surveillance by us; interfere with our employees by prohibiting them from speaking about the Union with other employees; or render assistance and support to the Union by distributing union authorization or membership cards to employees.

WE WILL NOT recognize General Chauffeurs, Sales Drivers and Helpers Local Union No. 179, affiliated with the International Brotherhood of Teamsters, AFL-CIO as the exclusive bargaining representative of its employees who perform, inter alia, hauling and other miscellaneous truckdriving functions (the unit) or execute a collective-bargaining agreement with the Union covering the unit, unless and until the Union has been certified by the National Labor Relations Board as the exclusive bargaining representative of the unit.

WE WILL NOT suspend, discharge, or refuse to reinstate employees because they assisted the Union or engaged in other union or protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold recognition from the Union as the bargaining representative of the unit, cease giving effect to the collective-bargaining agreement with the Union covering the unit, and reimburse employees for all moneys paid by them for initiation fees, dues, or other obligations of membership in the Union, with interest.

WE WILL offer Frank Jackson immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of our unlawful discrimination against him, with interest.

WE WILL expunge from our records any reference to the suspension and discharge of Frank Jackson and notify him in writing that this has been done.

F L TRUCKING CORPORATION